

2011

LRB-1187



Making of "/>

Jan. 16th - 22nd,
2011

Kunkel, Mark

From: Boggs, Breann C - DOA [Breann.Boggs@wisconsin.gov]

Sent: Tuesday, January 18, 2011 3:20 PM

To: Kunkel, Mark

Subject: RE: UW history

Thanks, Mark.

Breann C. Boggs

Executive Policy and Budget Analyst

Wisconsin Department of Administration

Division of Executive Budget and Finance

608.266.2843

breann.boggs@wisconsin.gov

From: Kunkel, Mark [<mailto:Mark.Kunkel@legis.wisconsin.gov>]

Sent: Tuesday, January 18, 2011 3:12 PM

To: Boggs, Breann C - DOA

Cc: Grant, Peter - LEGIS

Subject: UW history

Breann: take a look at the 1969 statutes, and compare ch. 36 (UW) with ch. 37 (state universities). Chapter 36 established an institution called the University of Wisconsin at the city of Madison, and created a board of regents for the UW. Ch. 37 creates a different board of regents for the state universities. In the 1971 statutes, ch. 36 is changed to establish a system with one campus located at or near the seat of state government and to create a board of regents of the UW system. In 1971, the board of regents in ch. 37 is changed to the board of regents of the UW system.

See fiscal bureau info paper no. 36 (UW System Overview) for more info on history:

<http://legis.wisconsin.gov/lfb/Informationalpapers/info.html>

Kunkel, Mark

From: Grant, Peter
Sent: Tuesday, January 18, 2011 3:50 PM
To: Boggs, Breann C - DOA
Cc: Kunkel, Mark
Subject: RE: UW-Madison

Oh, I remembered one other item that Bob mentioned to me. As I recall, he said that we would want to keep the "shared responsibilities" section (s. 36.09) for the authority board, chancellor, faculty, academic staff, and students, although some of the material in that section, particularly material under "board responsibilities," would probably be dropped.

From: Boggs, Breann C - DOA [mailto:Breann.Boggs@wisconsin.gov]
Sent: Tuesday, January 18, 2011 3:27 PM
To: Grant, Peter
Cc: Kunkel, Mark
Subject: RE: UW-Madison

Thanks, this is helpful.

Breann C. Boggs

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From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, January 18, 2011 3:23 PM
To: Boggs, Breann C - DOA
Cc: Kunkel, Mark - LEGIS
Subject: RE: UW-Madison

Hi Breann,

I can't find any other emails I sent Bob, but he and I did discuss a few issues over the phone. I told him that we really needed someone at DOA to go through ch. 36 and indicate with regard to every provision in the chapter whether you wanted to keep it (whatever it is, a requirement, a prohibition, or a grant of authority) for the UWMA or for the UW System. Bob said he would do that, and mentioned that the State Lab of Hygiene was a good example. We also mentioned the state herbarium, but I'm sure there are a lot of issues like this that we're not even aware of.

The other thing we're going to have to do is go through the statutes outside of ch. 36 and determine whether, wherever the term institution of higher education, UW System, board of regents, or UW-Madison is used, the provision needs to be amended to ensure that UWMA is included or excluded, as appropriate. In addition, we need to address each use of the term "authority" in the statutes for the same purpose. We can identify all of these instances, but DOA will have to tell us which way to go for each.

Peter

2/11/2011

From: Boggs, Breann C - DOA [mailto:Breann.Boggs@wisconsin.gov]
Sent: Tuesday, January 18, 2011 3:09 PM
To: Grant, Peter
Subject: RE: UW-Madison

Thanks!

Breann C. Boggs
 Executive Policy and Budget Analyst
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 Division of Executive Budget and Finance
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breann.boggs@wisconsin.gov

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, January 18, 2011 3:06 PM
To: Boggs, Breann C - DOA
Subject: FW: UW-Madison

January 11, 2011 9:55 AM
 OA

Madison

Hi Bob,

I don't know whether this question has been asked and answered already, but do you think that making the UW-Madison an authority would violate Art. 10, sec. 6 of the Wis. Constitution? Here's what that section says (the italics are mine):

Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Is a university that is an authority still a "state university"? Our drafting manual says "A state authority is a body corporate, created by the legislature, that is not 'the state.'" In fact, typically that is the reason authorities are created: they can perform functions that the state cannot. Note that in *Takle v. University of Wisconsin Hospital and Clinics Authority*, 402 F. 3d 768 (7th Cir. 2005), the court determined that UWHCA is a private entity, not an arm of the state, and therefore did not enjoy sovereign immunity from a federal employment discrimination lawsuit. (By the way, this opinion does a good job of discussing the question of what is the state, and is well-written besides. I'll send you a copy.)

Even if a UW authority is a "state university" within the meaning of Art. 10, sec. 6, would it still be connected "to such colleges in different parts of the state" as the constitution seems to require? In fact, doesn't the act of making it an authority *disconnect* it from the other colleges in the system?

I don't know much about the university fund, but if an authority is created, it may not be able to receive interest from the fund.

A couple of other questions occurred to me last night while I was trying to get to sleep. Doesn't the board of regents operate WHA and WHA-TV? That would be difficult to change, as I'm sure the board is the FCC licensee.

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- Also, what about licensing of the UW logo, etc.? Could the new authority use anything that incorporates the UW name or logo (e.g., the "motion W") without the consent of the board of regents? Finally, we are wondering how much of the board of regents duties in ch. 36 will need to be duplicated in ch. 37 for the authority's governing board?

Talk to you soon.

Peter

Kunkel, Mark

From: Hanle, Bob - DOA [bob.hanle@wisconsin.gov]

Sent: Friday, January 21, 2011 4:12 PM

To: Grant, Peter; Kunkel, Mark

Cc: Boggs, Breann C - DOA

Subject: UW Madison

We have slightly more direction on the UW Madison. As of now, it looks like the administration is not going with the full public authority model, like the Hospital. The treatment will be more like "separate from, but equal to" UW System. UW had similar concerns regarding the constitution and its need to access state resources (and bond ratings, insurance, etc.) In essence, separate chapter in the statutes, separate agency number, separate board, less state oversight that UW System campuses. However, the degree of independence, especially in areas like capital budgeting, procurement and tuition, has not yet been clarified.

I've gone through the statutes, finding references to UW-Madison, UW System and the Board of Regents. There's also a lot there that needs to be decided (most importantly, should a non-System Madison campus have a seat on the Wind Siting Council). It may come down to creating some kind of a shell, creating the general structure and then requiring the Governor, Madison Chancellor and/or DOA Secretary to come back to JCF with the details. I realize this may not be much help, but I am hoping this might give you a toehold.

Bob Hanle, Team Leader
State Budget Office
101 E. Wilson St. -- 10th Floor
P.O. Box 7864
Madison, WI 53707-7864
(608) 266-1037

2/11/2011

Kunkel, Mark

From: Grant, Peter
Sent: Tuesday, January 18, 2011 4:32 PM
To: Boggs, Breann C - DOA
Cc: Kunkel, Mark
Subject: RE: UW-Madison

Breann, as with the UWHCA, it may be important for the UW-Madison employees to remain employees of a state agency so that they can remain in the WRS. With UWHCA, this was done by creating an additional state agency, the UWHC Board, which is the employer of the hospital's employees and is required to enter into a "contractual services agreement" with UWHCA "for the provision of services by employees of the UWHC board."

Bob and I did not discuss this, so I'm not sure whether you want to continue this benefit for UW-Madison employees. If you do, we would need to know in what manner you want to do it. Do the employees become employees of DOA or some other state agency? Do you want to create a new state agency to employ them?

Note that the bill could continue an employee's participation in the WRS without continuing other benefits of being a state employee. I'm not familiar enough with the legislation that created UWHCA to know for sure, but I believe that former UW hospital employees were stripped of other privileges and protections held by state employees.

Peter

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